June 25, 2018

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: NOTICE OF EX PARTE
WT Docket No. 17-79: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;*
WT Docket No. 15-180: *Revising the Historic Preservation Review Process for Wireless Facility Deployment;*
WC Docket No. 17-84: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

On June 21, 2018, Courtney Neville and I of Competitive Carriers Association ("CCA")[1] met with representatives of the Federal Communications Commission's ("FCC" or "Commission") Wireless Telecommunications Bureau and Wireline Competition Bureau (collectively, "the Bureaus") to discuss the above-referenced proceedings. A full list of meeting participants is below. CCA applauds the FCC's work thus far to advance broadband services deployment and encourages the Bureaus to build on its good work to streamline state and local siting barriers.

As CCA has noted on record,[2] Sections 253 and 332 of the Communications Act, *as amended*, provide the Commission with the necessary authority to take action regarding state and local siting processes that are effectively prohibiting carriers from providing telecommunications services. The Commission has broad authority to interpret Sections 253 and 332, and to adopt rules and regulations in furtherance of those sections. CCA reiterated its request that the FCC shorten Section 332 shot clocks to a 30-day shot clock for collocations and a 60-to-75-day shot clock for all other siting applications to reflect the proliferation of small cells and today's network buildout.[3] In the alternative, CCA supports a 60-day shot clock for small cell

[1] CCA is the nation's leading association for competitive wireless providers and stakeholders across the United States. CCA's membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

[2] Letter from Rebecca Murphy Thompson, EVP & GC, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018) ("CCA Statutory Authority Letter"). *See also*, Letter from Kenneth J. Simon, Senior Vice President and Senior Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018).

[3] Comments of Competitive Carriers Association, WT Docket No. 17-79 at 13-14 (filed June 15, 2017) ("CCA Comments").

deployments and collocations and a 90-day shot clock for existing poles.[4] While certain jurisdictions have adopted shorter review windows on their own, providing evidence that shortening the shot clocks for application review will not overwhelm state and local authorities,[5] there is still need for FCC intervention. Ongoing issues reflect that case-by-case review of stagnant siting applications stunts deployment, and reasonable shot clocks will expedite next-generation deployment and curb application review fatigue.

The Commission also must address inflated fees and costs associated with broadband deployment. Competitive carriers are willing to pay actual costs to ensure timely processing of compliant siting applications. But there are some states and localities that charge fees clearly designed for outsized profit and divorced from actual costs. The Commission should therefore exercise its authority under Sections 253 and 332(c)(7)(B) to curb application processing fees and ensure that fees are only imposed on a nondiscriminatory basis. In addition, "fair and reasonable" fees[6] under Sections 253 and 332 should not include fees set by a fictional "market rate" construct.

Fees charged by state and local governments should be cost-based, nondiscriminatory, and publicly available. In particular, the Commission should clarify that application processing fees and any right-of-way-related fees should be based on authorities' actual costs to complete application review or provide ongoing maintenance work on an approved site. Many localities' fees vary by jurisdiction and lack basis in actual costs.[7] To ameliorate inflated and unknown fees, "actual costs" should be based on objective and nondiscriminatory thresholds and exclude licensing or consulting fees.[8] This limitation is appropriate considering Congress's statutory goal to promote deployment and not to create a revenue opportunity for permitting authorities.

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[4] *See*, Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 18, 2018). The Commission also should clarify that public hearings and consideration of public complaints do not stop any shot clock, either under Section 332 of the Communications Act or Section 6409(a) of the Spectrum Act.

[5] *See, e.g.,* CCA Comments (*citing*, Comments of Competitive Carriers Association, WT Docket No. 16-421 at 7-8 (filed Mar. 8, 2017) ("CCA Streamlining Comments") ("For example, Dublin, Ohio completes collocation reviews in 28 days or less. In Houston, Texas, the review process for small cell deployments, such as collocations, 'usually takes 2 weeks, but no more than 30 days to process and complete the site review.' In Kenton County, Kentucky, the maximum time permitted to act upon new facility siting requests is 60 days. Louisville, Kentucky generally processes small cell siting requests within 30 days, and Matthews, North Carolina generally processes wireless siting applications within 10 days").

[6] Some examples of fair and reasonable compensation for applications include: $50 attachment rate (Indiana); $20 annual attachment rate (Oklahoma). As a general threshold, CCA members are comfortable with application fees below $150. *See, e.g.*, CCA Comments.

[7] For example, CCA member Crown Castle recently highlighted varied and unreasonable costs associated with deployments in New York. Specifically, "the Town of Hempstead requires an escrow fee of $3,000 per new small cell node pole and $1,000 per collocation to cover 'consultant review.' At this rate, a typical network deployment results in escrow fees of $150,000 or more. In addition, the Town charges an application fee of $900 for each new pole and $650 for each new node on an existing pole. Hempstead also imposes a $450 fee to modify an existing site, which is in addition to the $650 fee charged by the Highway Department for a new pole application. All of these fees are in addition to the annual "voluntary" 5% gross revenue share for the Town." Comments of Crown Castle, WT Docket No. 17-79 at 12 (filed June 15, 2017) ("Crown Castle Comments").

[8] The FCC also should clarify that it is discriminatory and unreasonable to charge additional fees if a provider has previously paid the locality as a result of an existing fiber deployment or macro deployment agreements. The Commission must prevent "double dipping" and fee surpluses.

What's more, if third-party and consulting fees are deemed reasonable and appropriate, then the FCC must clearly define what constitutes exorbitant third-party costs.

Further, the Commission should address inequitable right-of-way management charges, which includes fees to actually use public poles or install new poles in a right-of-way. The FCC can and should use its authority under Section 253 to regulate access to municipally-owned poles when the actions of the municipality are deemed to be prohibiting or effectively prohibiting the provisions of telecommunications service.[9] Adopting reasonable pole attachment rates will boost deployment.

In addition to clarifying application review periods and addressing inflated fees, the FCC should provide an opportunity for carriers to submit "batch" applications for a network under applicable shot clocks. At the same time, to address concerns regarding potential application processing fatigue, the Commission could adopt a rule allowing a certain amount of applications, for example five applications per submission. This can be defined further per geographic area, such as a square mile.[10]

Finally, CCA emphasized that any aesthetic requirements imposed by a state and local government should be reasonable and explicit before a siting application is filed. Further, if localities require that equipment be shrouded, this material should not be weighed against the current definition of what constitutes a small cell.[11] While CCA is sympathetic to aesthetic concerns related to small cell deployment, these standards must be previously published, objective standards that are uniformly applied.[12] By confronting these issues, the FCC will empower competitive providers to bridge the digital divide where needed as well as to achieve 5G networks.

[9] CCA and others have highlighted the exorbitant pole attachment fees that providers are forced to pay for access to poles outside the scope of Section 224. Indeed, some localities already are adopting reasonable fees in this context, which is evidence that a reasonable threshold for right-of-way access fees is achievable. For example, Arizona recently adopted a $50 per pole attachment rate, accompanied by a $50 right-of-way access fee and a $100 application fee cap for the first five sites, dropping to a $50 application fee for all subsequent sites. Minnesota also adopted legislation limiting attachments to $150 per attachment, plus a $25 maintenance fee. Texas limits pole attachment fees to $20 per year for municipal owned light poles, traffic lights, and signs in the right-of-way. *See*, CCA Comments at 20-21.

[10] *See id*. at 15.

[11] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WT Docket No. 17-79 (Mar. 22, 2018) ("Second Report and Order").

[12] *See*, Letter from William J. Hackett, Director, Federal Regulatory Compliance, T-Mobile USA, Inc., to Marlene H. Dortch, WT Docket No. 17-79 (filed June 18, 2018).

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
EVP & General Counsel
Competitive Carriers Association

cc (via email): Wireless Telecommunications Bureau Attendees:
Jonathan Campbell
Garnet Hanly
Jonathan Lechter
Elizabeth McIntyre
David Sieradzki (via teleconference)
Patrick Sun
Colin Williams
Joseph Wyer

Wireline Competition Bureau Attendees:
Deborah Salons (via teleconference)